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Judgments of the General Court in Cases T-1097/23 | Vivendi/Commission and T-1119/23 |  
Lagardère/Commission

### **Competition: the Commission may, under certain conditions, require the disclosure of documents stored on personal communication devices used for professional purposes**

*Such a request, although constituting an intrusion into private life, may be justified under EU law*

In October 2022, Vivendi notified the European Commission of a merger consisting of the acquisition of sole control of Lagardère. Vivendi and Lagardère are two French groups operating in the media and publishing sectors.

By decision of 9 June 2023, the Commission authorised this transaction subject to certain conditions. However, suspecting that the merger had been implemented prematurely, it opened an investigation into the matter.

In this context, by decisions of 19 September 2023,<sup>1</sup> the Commission sent requests for information to the two undertakings requiring them to provide documents identified by means of predefined themes and search terms, drawn from communications by designated persons over a specified period. Those documents covered, in particular, information transmitted via both professional and private electronic communication devices, provided that they had been used at least once for professional purposes.

Taking the view that these requests infringed, in particular, the right to respect for private life, Vivendi and Lagardère brought proceedings before the General Court of the European Union seeking the annulment of the Commission's decisions.

In its judgments, delivered the 3 June, **the Court dismisses the actions.**

The General Court finds that **the requests were likely to result in a serious interference with the right to respect for private life.** However, **it considers that this restriction is justified under EU law.** Indeed, it is based on a sufficiently clear and precise legal basis, respects the essence of the right to privacy, pursues an objective of general interest consisting in ensuring the effective application of competition rules, and remains proportionate to that objective.

In that regard, the General Court notes that information relating to private life is collected only incidentally in the course of seeking information of a commercial nature. It also emphasises that requests are limited to certain persons, a specific period and precisely defined search criteria. Furthermore, they are accompanied by safeguards designed to protect sensitive data and confidential information.

Finally, the General Court considers that the Commission's investigative powers would risk being rendered ineffective if undertakings were able to refuse to disclose documents stored on personal devices used for professional purposes.

The General Court also points out that the Commission's requests for information are subject to review by the EU courts, which constitutes a safeguard for the protection of fundamental rights.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

Unofficial document for media use, not binding on the General Court.

The full text and, as the case may be, an extract of the judgment is ([T-1097/23](#) and [T-1119/23](#)) is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

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<sup>1</sup> Commission Decisions C(2023) 6428 final and C(2023) 6429 final of 19 September 2023 relating to a procedure under Article 11(3) of Council Regulation (EC) No 139/2004 (Case M.11184 – Vivendi/Lagardère), as amended respectively by Commission Decisions C(2023) 7463 final and C(2023) 7464 final of 27 October 2023.